

470907

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Jacob Shurkin

96-04782

Name of Respondent

Dino A. Villasenor
J.B. Oxford & Co.

REPRESENTATION

Claimant Jacob Shurkin ("Claimant") appeared *Pro Se*.

Respondents Dino A. Villasenor ("Villasenor") and J.B. Oxford & Co. ("JBOC") were represented by Scott G. Monson, Esq., Associate General Counsel, J.B. Oxford & Co., Beverly Hills, CA.

CASE INFORMATION

The Statement of Claim was filed October 28, 1996.

Claimant's Uniform Submission Agreement was signed November 25, 1996.

The Joint Statement of Answer filed by Respondents Villasenor and JBOC (collectively "Respondents") was filed February 11, 1997.

JBOC's Uniform Submission Agreement was signed February 11, 1997.

Villasenor did not submit an executed agreement to arbitrate.

HEARING INFORMATION

Hearing Date/Sessions: September 17, 1997/one session

Hearing Location: Vincent Varallo Associates Inc.
Philadelphia, PA

CASE SUMMARY

Claimant alleged that on October 9, 1996, he purchased 100,000 shares of Fresenius National Medical at \$.14 per share through his broker, Respondent Villasenor, a representative of Respondent J.B. Oxford & Co. Claimant further alleged that prior to effecting the trade, he asked Villasenor how much the commission would be, and that Villasenor responded that it would be "about \$50 as usual." Claimant alleged that when he received his confirmation he learned that JBOC had charged him a commission of \$700 (5% of the purchase price). Claimant contended that the commission charged was 14 times higher than what Villasenor told him it would be.

Respondents maintained that the account application executed by Claimant bound him to certain terms and conditions contained in JBOC's disclosure brochure (which is sent to customers at the time their accounts are established). Respondents further maintained that the fee and commission schedule contained in the brochure states that commissions for securities trading under \$1.00 per share is \$.03 per share with a \$20.00 minimum, and that an additional charge of \$.01 per share is payable on listed orders in excess of 2,000 shares. During the course of the hearing, JBOC indicated that commissions on securities trading under \$1.00 per share are capped at 5% of the purchase price.

RELIEF REQUESTED

Claimant requested relief of the return of what he believes is a \$650 commission overcharge.

Respondents demand that the claims against them be dismissed, and that Claimant be ordered to pay JBOC's costs and expenses, including a reasonable attorney's fee.

OTHER ISSUES CONSIDERED & DECIDED

Respondents sought an order that the case be decided on papers without a hearing. Alternatively, respondents asked that they be permitted to appear at the hearing via telephone. Claimant objected to both requests. The arbitrator considered the motion to decide the case on papers and the response and denied the motion to decide the case on the pleadings. The alternative motion to appear telephonically was granted as to JBOC but denied as to Villasenor.

When Villasenor failed to appear at the hearing, Claimant moved for judgment in his favor. In that regard, Villasenor's counsel, Scott Monson, Esq., represented that he mailed Villasenor notice of the time and place of the hearing, and that the mail had not been returned. However, attorney Monson and JBOC's Director of Compliance, Albert Laubenstein, advised the Arbitrator that they had been unable to reach Villasenor to notify him that his motion to appear telephonically had been denied. Based on the aforesaid representations, the Arbitrator is satisfied that Villasenor received notice of the time and place of the hearing, but that despite the good faith efforts of Messrs. Monson and Laubenstein, he did not receive notice that his motion to appear telephonically had been denied. In light of the foregoing, the Arbitrator denied Claimant's motion for judgment on the ground that Villasenor failed personally to appear.

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents Villasenor and JBOC, jointly and severally, are liable to and shall pay to Claimant \$325.00.
2. That Respondents Villasenor and JBOC, jointly and severally, are liable to and shall reimburse Claimant \$7.50 for one-half of the hearing session deposit previously submitted to the NASD Regulation.
3. That each party shall bear its own costs and expenses, including attorney's fees, with the exception of the forum fees as specified below.
4. That any and all other requests for relief not specifically addressed herein are denied.

OTHER COSTS

Pursuant to Rule 10333, Respondent JBOC is assessed a member surcharge of \$100.00.

FORUM FEES

Pursuant to section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

1. Hearing session x \$15.00 = \$15.00. However, attorney Monsarrat advised the Arbitrator that they had submitted a hearing session deposit of \$15.00.

Forum Fees are assessed at \$7.50 to Claimant and \$3.75 to Respondent JBOC and \$3.25 to Respondent Villasenor. Claimant is to receive credit for the \$7.50 hearing session deposit previously submitted to the NASD Regulation, leaving no further assessment due from Claimant. Respondents are to receive credit for one-half of the hearing session deposit previously submitted by Claimant which Respondents were ordered to reimburse to Claimant, leaving no further assessment due from Respondents.

DATE

9/24/97

ARBITRATOR'S SIGNATURE


Maralynne Flehner, Presiding
Public Arbitrator

Date Decision Served by NASD Regulation:

September 30, 1997